

Resolution Agreement
San José Unified School District
OCR Case No. 09-18-1341

In order to resolve the issues raised in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), under Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (Title II), San José Unified School District (District), agrees to take the actions outlined in this Resolution Agreement (Agreement).

The District agrees to take the following steps:

I. Evaluation and Placement

- A. The District will convene an Individualized Education Program (IEP) team meeting by October 19, 2018, or at a mutually agreed-upon date between the School¹ and the Student's parent (Parent), which is to be attended by a team of individuals knowledgeable about the Student, and about evaluation data concerning the Student. The purpose of the meeting, and subsequent meetings if necessary, is to ensure that the Student's disabilities are fully and correctly identified; to review the goals, accommodations, placement and services provided for in the Student's current IEP; to discuss any concerns of harassment of the Student that the Parent may have; and to ensure that the Student's IEP provides a placement and services that are adequate to meet all of the Student's individual disability-related needs.
- B. The Parent will be given reasonable notice of the date on which the team will meet and be given opportunity to attend and to submit records or other information.
- C. At the meeting, the IEP team will review whether additional evaluation of the Student is needed to fully and accurately identify the Student's disabilities. The team will review all records pertinent to these determinations.
- D. If the IEP team determines that additional or more recent evaluation data are necessary to fully and correctly identify the Student's disabilities, the School will complete the necessary assessments within 60 days of parent consent to the assessment, and the date for completing the placement process may be extended for an additional 10 days. If the team determines that additional assessment is not needed, the team will document the reasons for that determination in the Student's IEP or an addendum.
- E. Either (a) at the IEP team meeting referenced in Section I.A. if the team determines that no additional assessments are needed or (b) at a subsequent meeting held within twenty days of the date of completion of any additional assessments, the team will review whether the services, accommodations and modifications currently in place for the Student are appropriate and sufficient to meet his individual needs, or whether additional or alternate services, accommodations or modifications are needed. In particular, the IEP team will discuss:

¹ OCR previously notified the District of the name of the school.

- a. Whether to conduct a Functional Behavior Assessment (FBA), and develop a Behavior Intervention Plan (BIP); and
- b. Whether the Student needs additional services or supports to promote social skills development.

All decisions concerning whether or not services, accommodations or modifications are needed, and the basis for the decisions, will be documented in the Student's IEP or an addendum.

- F. The Parent will be provided with written notice of procedural safeguards at the IEP team meeting referenced in Section II.A.

Reporting Requirements

- G. By November 1, 2018, the School will provide OCR a copy of the IEP developed pursuant to the meeting described in Section II.A., the IEP meeting notes, and any documentation reviewed at the meeting, including completed assessments.

II. Individualized Support Plan

- A. The School will establish a Support Team to ensure that the Student's disability-based needs are met. This Support Team will:
 1. Include, at a minimum, the Parent, and relevant School personnel who are knowledgeable about the Student.
 2. Develop an individualized support plan (Support Plan) to ensure that all parties are apprised of the steps needed to keep the Student safe in school.
 3. Establish a point person or point of contact; and
 4. Meet to review and revise the Support Plan as necessary and upon request of the Student or the Parent to ensure its continuing effectiveness for the duration of the Student's enrollment at the School. The first such meeting will be held on or before October 19, 2018. This meeting may be held in conjunction with the IEP team meeting referenced in Section I.A., if the IEP team and the Parent are agreeable.
- B. The designated point of contact will meet with the Student's teachers by November 1, 2018 to discuss the Support Plan and provide each of them a copy.

Reporting Requirements

- C. By November 9, 2018, the School will provide OCR a copy of the Support Plan, meeting notes pursuant to Section II.A.4, and any documentation reviewed at the meeting. The School will also confirm that each of the Student's teachers has received a copy of the Support Plan.

III. Guidance Memorandum

- A. By November 9, 2018, the District will provide a draft to OCR for review and approval of a guidance memorandum that clarifies the District's responsibilities to students with disabilities who report allegations of harassment based on disability or any other basis. The guidance memorandum is to include the following:
1. When a school knows or should know of harassment based on a student's disability, it should take immediate and appropriate action to investigate or otherwise determine what occurred.
 2. If a school's investigation reveals that harassment based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects.
 3. The harassment on *any* basis of a student with a disability who is receiving a free appropriate public education (FAPE) can result in the denial of FAPE that must be remedied under Section 504.
 4. Under Section 504, as part of a school's appropriate response to harassment on *any* basis, the school should convene the IEP team or the Section 504 team to determine whether, as a result of the effects of the harassment, the student's needs have changed such that the student is no longer receiving FAPE. The effects of harassment could include, for example, adverse changes in the student's academic performance or behavior. If the school suspects the student's needs have changed, the IEP team or the Section 504 team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with the disability to avoid or handle the harassment.

Reporting Requirements

- B. Within fifteen days of receipt of OCR's final revisions, the District will finalize the guidance memorandum and circulate it via e-mail or other means to all District staff responsible for investigating complaints of harassment and/or implementation of Section 504 plans or IEPs; all District site administrators; and all District site special education staff.
- C. Within twenty days of receipt of OCR's final revisions, the District will provide OCR a copy of the final guidance memorandum and of the e-mail to District and site staff as described above in Section III.B.

IV. Investigation of Internal Complaints

- A. The District will complete its investigation of the Parent's internal complaint of disability harassment, dated February XX, 2018, notify the Parent of its findings, and provide the Parent procedural safeguards.
- B. The District will notify OCR if there are additional pending complaints of disability harassment and, if so, provide a timeline for completion.

Reporting Requirements

- C. By November 2, 2018, the District will provide OCR a copy of the findings issued to the Parent pursuant to Section IV.A.
- D. By December 3, 2018, the District will provide OCR a copy of any findings issued in response to additional pending complaints of disability harassment pursuant to Section IV.B.

V. Monitoring

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further the District understands that during the monitoring of this agreement, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II at 34 C.F.R. Part 104 and 28 C.F.R. Part 35, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close and dismiss this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

_____/s/_____
Superintendent
San José Unified School District

10/08/2018
Date